

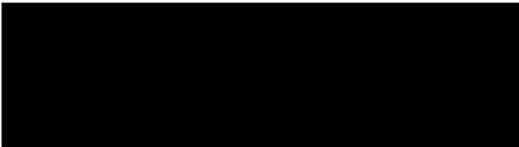
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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
MSC 04 337 10318

Office: NEWARK

Date:

JUN 30 2008

IN RE: Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Newark, New Jersey. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status during the requisite period.

The director also stated that the applicant failed to establish that he was front-desked by CIS because he traveled outside the United States before November 6, 1986. This portion of the director's discussion shall be withdrawn. The director deemed the applicant to be a class member by adjudicating the I-687 application on the merits.

On appeal, counsel asserted that the evidence submitted is sufficient to demonstrate the applicant's eligibility.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application was filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

For purposes of establishing residence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other

relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant submitted the instant Form I-687 application on September 1, 2004. On the Form I-687, the applicant stated that he worked for the Bridgewater Diner, in Bridgewater, New Jersey, from February 1981 to May 1984 as a dishwasher and for the Main Street Restaurant, also in Bridgewater, from May 1984 to January 1989 as a bus boy.

The record contains:

- a letter dated December 6, 1989 from R-C Capital;
- a form affidavit dated May 17, 1990 from [REDACTED];
- a letter dated November 30, 1989 from First National bank;
- a letter dated December 4, 1989 from the owner of the Main Street Restaurant in Bridgewater, New Jersey;

- a letter dated December 6, 1989 from the associate pastor of St. Joseph Church in Bound Brook, New Jersey;
- a letter dated December 1, 1989 from the controller of Meadowbrook Village;
- the applicant's Costa Rica passport;
- a letter dated December 12, 1989 from [REDACTED];
- an affidavit dated December 18, 1989 from [REDACTED];
- a letter dated February 24, 1990 from a vice president of Metcalf & Eddy, an engineering firm in Branchburg, New Jersey;
- letters from [REDACTED], the owner of the Bridgewater Diner, dated December 4, 1989 and May 15, 1990;
- a letter dated November 22, 1989 from [REDACTED];
- a notarized letter from [REDACTED] dated November 22, 1989;
- a form affidavit dated May 17, 1990 from [REDACTED];
- a letter dated May 18, 1990 from the acting chief of police of Bridgewater, New Jersey;
- a letter dated May 18, 1990 from the police chief of Somerville police department;
- a letter from a [REDACTED], of SAFE International Incorporated, of Newark, New Jersey, also dated May 18, 1990;
- a letter dated May 18, 1990 from [REDACTED], MD;
- December 4, 1989 and May 21, 1990 letters from [REDACTED];
- the first pages of four residential leases;
- the applicant's initial Form I-687;
- the applicant's Form for Determination of Class Membership in *CSS v. Meese*; and
- the applicant's Social Security Statement, dated April 20, 2001.

The record contains no other evidence pertinent to the applicant's continuous residence or continuous physical presence in the United States during the salient periods.

The December 6, 1989 letter from R-C Capital purports to have been signed by [REDACTED], the president of the company. The body of that letter reads, in its entirety,

This is to certify that [REDACTED] worked for this company from April 81 to December 87.

In his position as part time, cleaner [REDACTED], performed both in an honest and responsible manner, fulfilling his duties at all time.

If you require any further information, do not hesitate to call us.

[Errors in the original.]

Initially, this office notes that the December 6, 1989 letter from R-C Capital does not include the alien's address at the time of his employment, does not state the exact period of employment, and does not state the duties of the applicant in that job. That letter further fails to state whether the information provided was taken from official company records, where those records are located, and whether CIS may have access to those records, or, in the alternative, that such records are unavailable, why they are unavailable, and that the employer is willing to testify.

Because it does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) this employment verification letter will be accorded less weight than it would be if it did conform. However, it remains a document relevant to whether the applicant resided in the United States during the requisite period, and will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(v)(L).

Even more importantly, however, the claim of employment for R-C Capital from April 1981 to December 1987 appears to conflict with the applicant's claim on the instant Form I-687 that he worked for the Bridgewater Diner from February 1981 to May 1984 and for the Main Street Restaurant from May 1984 to January 1989. The applicant did not list the employment for R-C Capital on his Form I-687 application.

An applicant who asserts one employment claim on the I-687 application and documents another, apparently unrelated, employment claim raises serious questions of credibility. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The November 22, 1989 letter from [REDACTED] states that he has known the applicant since February 1981, when the applicant arrived in the United States.

The November 22, 1989 affidavit from [REDACTED] states that he has known the applicant since February of 1981, when he arrived in the United States. Although that letter is dated November 22, 1989, a notary public attested to the signature on December 8, 1989.

The body of the May 17, 1990 affidavit from [REDACTED] states, in its entirety,

My name is [REDACTED] residing at [REDACTED] Brook N.J. 08805[.] For this intermedie I decalred that [REDACTED] is my relative (Friend) and I croos the border of Mexico to United States on 02-02-81. We did not have problems with immigration or any other legal institution. I signed before a notary public to be validated.

[Errors in the original.]

The associate pastor's December 6, 1989 letter states that the applicant entered the United States during February 1981 and subsequently attended church at that Bound Brook congregation periodically. That letter further stated that the applicant's address was then [REDACTED] in Bridgewater, New Jersey.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) requires that attestations by churches to establish residence in the United States by showing church membership must state the address at which the applicant resided during the membership period, establish how the author knew the applicant, and establish the origin of the information to which the affiant attests.

The writer did not reveal the source of the information he was reporting about the date the applicant entered and his address. The December 6, 1989 declaration does not conform to regulatory standards for attestations by churches. For this reason, the affidavit will be accorded less weight than it would if it was produced in compliance with the governing regulation, but will be considered in accordance with 8 C.F.R. § 245a.2(d)(3)(vi)(L). Further, this office notes that the applicant stated on the instant Form I-687 that his address on December 6, 1989 was [REDACTED] rather than [REDACTED].

The December 1, 1989 letter from the controller of Meadowbrook Village indicates that the applicant rented the property at [REDACTED] in Bridgewater, New Jersey from June 1, 1985 through the date of the letter.

The December 12, 1989 letter from [REDACTED] and the December 18, 1989 affidavit from [REDACTED] both state that the affiants have known the applicant since he entered the United States during February 1981.

The body of the February 24, 1990 letter from Metcalf & Eddy states, in its entirety,

I, [REDACTED]. Swear that I have known [REDACTED]. Since he stard working for this company from April ,81 to December87

I have known him to be honest, well mannered and striving to make a better life for himself.

As was noted above, 8 C.F.R. § 245a.2(d)(3)(i) requires that letters from employers include the alien's address at the time of employment. They must also state whether the information provided was taken from official company records, must state where those records are located and whether they are available for inspection, or, in the alternative, must state, under oath, that they are unavailable, why they are unavailable, and that the employer is willing to testify. The February 24, 1990 letter from Metcalf & Eddy does not comply with those requirements, and will be accorded less evidentiary weight than it would be if it complied. However, it remains a document relevant to whether the applicant resided in the United States during the requisite period, and will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(v)(L).

More importantly, however, the applicant did not mention employment for Metcalf & Eddy on his Form I-687 application, and the claim of employment for Metcalf & Eddy from April 1981 to December 1987 appears to be contradicted by the applicant's claim, on the Form I-687 application, that he worked at the Bridgewater Diner from February 1981 to May 1984 and for the Main Street Restaurant from May 1984 to January 1989. It also conflicts with the assertion in the December 6, 1989 letter from R-C Capital, which states that the applicant worked for that company from April 1981 to December 1987.

Again, an applicant who asserts one employment claim on the Form I-687 application and documents another, apparently unrelated, employment claim raises serious questions of credibility. Again, this suspicion must be assuaged with objective evidence, rather than merely a denial or wrongdoing or a feasible explanation.

The body of the Bridgewater, New Jersey acting chief of police's May 18, 1990 letter states, in its entirety,

The above[-]named person has lived at [REDACTED], Bridgewater, New Jersey since June, 1985.

A search of our file, conducted by this department, shows no entries against him.

That letter does not state the source of the police department's asserted knowledge of the applicant's residence from June 1985 to the date of that letter.

The May 18, 1990 letter from chief of the Somerville police states that no records of offenses by the applicant in the Borough of Somerville were located pursuant to a search by name only, without fingerprints.

Both letters from [REDACTED] state that the applicant lived in [REDACTED]'s home at [REDACTED] [REDACTED] in Somerville New Jersey from February 1981 to May 1985. Although one of those letters

was dated, and apparently signed, on December 4, 1989, it was attested to by a notary on December 8, 1989.

The December 4, 1989 letter from the owner of the Bridgewater Diner states that the applicant worked for that company from February 7, 1981 to May 20, 1984.

As was noted above, 8 C.F.R. § 245a.2(d)(3)(i) requires that letters from employers should be on letterhead, if the employer has such stationery, and must include the alien's address at the time of employment. They must also state whether the information was taken from official company records, where those records are located, and whether they are available for inspection, or, in the alternative, must state under oath that those records are unavailable, why they are unavailable, and that the employer is willing to testify. The December 4, 1989 letter from the Bridgewater Diner does not comply with those requirements, and will be accorded less evidentiary weight than it would be if it complied. However, it remains a document relevant to whether the applicant resided in the United States during the requisite period, and will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(v)(L).

The May 15, 1990 letter from the owner of the Bridgewater Diner is entitled, "REFERENCE: [REDACTED] - LETTER DATED DECEMBER 4, 1989." The meaning of the reference to a December 4, 1989 letter is unclear to this office, as the letter is dated May 15, 1990. The body of the letter states that the applicant worked at that restaurant as a dishwasher from February 7, 1981 to May 20, 1984.

Again, that letter is not on letterhead, does not state the applicant's home address during the employment period, does not state whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records, or, in the alternative, that such records are unavailable, why they are unavailable, and that the employer is willing to testify to the facts alleged. Again, that employment verification letter does not conform to the pertinent regulatory requirement, and will be accorded less weight than a conforming letter would be accorded, but will be considered in accordance with 8 C.F.R. § 245a.2(d)(3)(v)(L).

[REDACTED]'s letter states that the applicant has been his patient for "quite a while."

The May 18, 1990 letter from [REDACTED] of SAFE International states that he has known the applicant since the applicant arrived from Costa Rica in February of 1981, at which time he lived at [REDACTED] in Somerville, New Jersey. That letter provides what is apparently Mr. [REDACTED] home address. In two places on that letter [REDACTED] given name is spelled "Mainor." In another instance it is spelled "Minor."

The four first pages of residential leases identify the applicant as the lessee of an apartment at [REDACTED] [REDACTED] in Bridgewater, New Jersey. The terms of those one-year leases end on May 31, 1986, 1987, 1988, and 1989. The remaining pages of those leases, which would have revealed, among other things, who executed them for the lessor, were not provided.

The November 30, 1989 bank letter states that the applicant had, on that date, a checking account with that institution. It does not state the date upon which the account was opened. It has no direct relevance, therefore, to whether the applicant resided and was present in the United States during the requisite period. This office notes, however, that the letter is dated November 30, 1989 and attested to by a notary public on December 8, 1989.

The December 4, 1989 letter from the owner of the Main Street Restaurant indicates that he employed the applicant from May 29, 1984 to January 24, 1989. Once more, that letter does not include the applicant's address at the time of employment. It also does not state that the information was taken from official company records, where those records are located, and whether CIS may have access to those records, or, in the alternative, that such are unavailable, why they are unavailable, and that the employer is willing to testify. Once more, because it does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) this employment verification letter will be accorded less weight than it would be if it did conform, but will be considered.

The applicant's Social Security Statement, which is dated April 20, 2001, shows lifetime taxed earnings in the United States beginning in 1989. It contains no indication that the applicant had earnings in the United States prior to that year.

In a Notice of Intent to Deny (NOID), dated April 28, 2004, the director indicated that the applicant had not submitted evidence sufficient to demonstrate his eligibility. The director indicated that CIS intended, therefore, to find the applicant ineligible for temporary resident status pursuant to Section 245A of the Act. The applicant was accorded 30 days to respond to that notice. In response, the applicant submitted some of the evidence discussed above.

In the Notice of Decision, dated September 22, 2006, the director denied the application based on the applicant's failure to demonstrate that he continuously resided unlawfully in the United States during the requisite period.

On appeal, counsel asserted that the evidence submitted is sufficient to establish the applicant's eligibility.

The salient issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982 through the end of the period of requisite residence.

The letter from the applicant's church does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(v).

The applicant's employment verification letters do not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i).

Many of the documents in the record appear to have been attested to on days other than the days upon which they were signed.

The claim of employment for R-C Capital conflicts with the applicant's claim of employment at the Bridgewater Diner and the Main Street Restaurant during the same period.

The claim of employment for Metcalf & Eddy conflicts with the applicant's claim of employment at the Bridgewater Diner and the Main Street Restaurant during the same period, and with his claim of employment for R-C Capital.

These various contradictions would be enough, absent reconciliation by objective evidence, to call the authenticity and reliability of the applicant's evidence into question, thus supporting the director's finding that the applicant has not demonstrated eligibility. On that basis alone this office would find that the applicant failed to demonstrate his continuous residence during the requisite period and uphold the decision of the director. The record, however, contains more direct evidence of ineligibility.

The next issue to be addressed is whether the applicant was absent from the United States in a single instance of more than 45 days.

Pursuant to section 245A(a)(2) of the Act, set out above, the applicant must establish continuous residence from before January 1, 1982 through the date the application was filed. The regulation at 8 C.F.R. § 245a.2(h)(1) provides that a single absence of more than 45 days during the salient period will interrupt an applicant's continuous residence.

On his Form for Determination of Class Membership the applicant stated that he left the United States on December 1, 1987 and returned on March 1, 1988, a period of 91 days. [REDACTED]'s May 17, 1990 form affidavit, submitted by the applicant, states that he knows that the applicant left the United States on December 10, 1987 and returned on March 1, 1988.

For the purpose of calculation, this office will rely on the dates provided by the applicant, based on the assumption that they are likely more reliable. The applicant claims to have been absent from the United States for 91 days. The remaining issue is whether the applicant has demonstrated that he submitted his application on or before January 15, 1988, the 45th day after December 1, 1987, when he left the United States. If he did file or attempt to file on or before January 15, 1988, then he was not absent for 45 consecutive days of the required period of continuous residence. If he did not, then the applicant's own admission on the Form for Determination of Class Membership demonstrates that he is ineligible.

The record contains no evidence, nor even an assertion, that the applicant submitted his initial Form I-687 on or before January 15, 1988. The only indication of when the applicant submitted that form is the date on that document, which indicates that he signed it on December 21, 1989. That signature date appears to show that the applicant could not have submitted the initial application before that date. The applicant's own admission on the Form for Determination of Class Membership demonstrates, therefore, that the applicant was absent more than 45 consecutive days of the period of requisite continuous residence and has failed to show continuous residence from January 1, 1982 until the date he

filed his initial Form I-687 application. The application was correctly denied on that basis, which has not been overcome on appeal.

The applicant is therefore ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on that basis, which has not been overcome on appeal. In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.